

## HEWITT'S CASE.

Where it is charged in the bill, that the defendant is in custody as a lunatic, it is of course for his committee to answer for him; but if the committee be interested in the matter in controversy, then the lunatic must have a guardian appointed for him.—This court has jurisdiction to make partition of real and personal estate; but if the personal estate be in the hands of an executor or administrator, it must, in general, be distributed under the direction of the Orphans Court.

THIS bill was filed on the 22d of January, 1831, by *Eli Hewitt* against *Rezin D. Hewitt* and *Jacob Hewitt*; it states, that *Eli Hewitt* died in June, 1827, intestate, leaving these parties his children and heirs at law, that at the time of his death he was seised in fee simple of certain real estate, and possessed of some chattels real, which being in themselves incapable of division, it was prayed, that they might be sold and the proceeds divided among these parties. But it was further stated, that the defendant *Jacob Hewitt*, had, by a commission from this court, been found a lunatic; and that the other defendant *Rezin D. Hewitt*, had been appointed his trustee, in whose custody he then was as a lunatic; upon which it was prayed, that by a special order, the defendant *Rezin D. Hewitt*, might be authorized to answer for him. And to obtain the opinion of the Chancellor upon this latter prayer, the bill was at once submitted to him.

26th January, 1831.—BLAND, Chancellor.—Where a defendant has been found a lunatic by a regular commission, and is then in custody as such; and it is so stated, as in this instance, it is a matter of course for him to answer by his committee, without any special order for that purpose; but here it appears, that the lunatic's committee is interested in the subject in controversy; and, therefore, it becomes necessary to appoint a disinterested, capable person as his guardian, to answer for him. (a) *Subpœnas* may issue in this case, as of course, against both the defendants; but no further proceedings can be had, as against the lunatic, until he has a guardian appointed for him who will consent to act as such, and take charge of his interests. The Chancellor will expect to have some suitable person described and recommended to be guardian to the defendant *Jacob Hewitt*.

Whereupon it is Ordered, that this case stand over as to the defendant *Jacob Hewitt*, until further order.

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(a) 2 Mad. Chan. 333; *Lloyd v. —*, 2 Dick. 460; *Lyon v. Mercer*, 1 Cond. Chan. Rep. 182.